IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 417 OF 2007

Union of India ... Applicants

Vs.

Sheikh Mohammed Basheer & Anr. .. Respondents

Mr. Y.R.Mishra, Advocate, for the applicants.

Ms. M.H.Mhatre, APP, for the State.

CORAM: J.H.BHATIA,J.

DATE : 28th June, 2007.

P.C.

1. Heard Mr. Mishra, Counsel for the Union of India. He seeks to prefer an appeal for enhancement of sentence awarded by the Addl. Chief Metroplitan Magistrate,3rd Court, Esplanade, to the respondent No.1.

2. The respondent no.1 - accused had brought certain electronic goods from Hongkong and was trying to evade customs duty. He was caught with the goods

because he was not willing to pay customs duty. He was allowed to take back or re-export the goods to Hongkong which he did. The total value of the goods was Rs.37,58,700/- approximately. During the departmental proceedings, penalty of Rs.3 lakhs and fine of Rs.1 lakh was imposed which he paid. He was also prosecuted by the Customs Department under Section 135(1)(ii) of the Customs Act. The accused pleaded guilty and prayed for leniency. After taking into consideration the circumstances, the learned Addl. C.M.M. convicted him under Section 135(1)(ii) of the Customs Act and sentenced him to imprisonment which he has already undergone and to pay fine of Rs.25,000/- on each count under Section 135(10(ii) of the Customs Act. The accused/respondent NO.1 was in custody for a period of about 15 days and thus effectively he was sentenced to undergo imprisonment for 15 days and to pay fine of Rs.50,000/-.

3. The offence under Section 135(1)(ii) is punishable with imprisonment which may extend to three years or with fine or with both. The accused is an Engineer who has settled abroad for last about 6 years and while coming from Hongkong to India, he had brought with him electronic goods. In the Departmental proceedings, he was required to pay fine and penalty amounting to Rs.4 lakhs. He pleaded guilty and prayed

for leniency and was sentenced to undergo imprisonment of 15 days with fine of Rs.50,000/-.

4. Taking into consideration the nature of offence, the circumstances and the sentence prescribed by law, I find that the learned Magistrate was right in awarding the impugned sentence. It is not a fit case to grant leave for enhancement of sentence.

5. Hence, leave refused. Appeal stands dismissed.

(J.H.BHATIA,J.)